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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,537

07/28/2006

Bernardus Hendrikus Hendriks

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06/10/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

SCHWARTZ, JORDAN MARC

ART UNIT

PAPER NUMBER

2873

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/597,537	<b>Applicant(s)</b> HENDRIKS ET AL.	
	<b>Examiner</b> Jordan M. Schwartz	<b>Art Unit</b> 2873	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 10, 11 and 13-20.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Jordan M. Schwartz/  
 Primary Examiner, Art Unit 2873

Continuation of 5. Applicant's reply has overcome the following rejection(s): the 112 rejections of claims 10 and 19 set forth in the prior office action.

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to Kuiper, applicant first argues that "the entrance window that contacts a fluid does not have a curvature which is the same curvature (assumed to mean the same sign) as the meniscus between the very same fluid and another fluid". However, Kuiper does disclose this. Specifically, for example in figure 7 of Kuiper, entrance window "72" contacts fluid "B" (see figure 7, the right side surface of window "72" in contact with fluid "B"). This surface is convex to the image side regardless of voltage. Additionally, meniscus "64" is a meniscus formed between fluids "A" and "B". This surface is likewise convex to the image side when no voltage is applied. Both have in common fluid "B". Therefore, the entrance window that contacts fluid "B" does have the same curvature i.e. the same sign as the meniscus (meniscus "64") between the very same fluid i.e. fluid "B" and fluid "A". Based on the claim language, Kuiper clearly reads on both independent claims 1 and 19 (as well as the dependent claims set forth in the office action).

Applicant further argues that these claims are directed to a specific meniscus, namely the meniscus between the fluid that contacts the surface of the window and another fluid. Applicant further argues that meniscus "64" is not the meniscus between the fluid that contacts the surface of the entrance window and another fluid. However, applicant is arguing a limitation that has not been claimed. Specifically, the independent claims are broadly claiming "the chamber comprising a first fluid, a second fluid, in contact over a meniscus extending transverse". Nowhere is it claiming that this meniscus is that between the surface that contacts the entrance window and another fluid. Therefore, based on the broad language of the claim, meniscus "64" is a meniscus between the first fluid (fluid "B") and the second fluid (fluid "A") extending transverse. The claim then claims that the entrance window (window "72") has a surface in contact with the first fluid i.e. fluid "B". As stated above, the image side surface of window "72" is in contact with fluid "B" i.e. is "in contact with the first fluid". As stated above (and in the office action), the curvature of this surface i.e. the image side surface of window "72" has the same sign as the curvature of the claimed "meniscus" i.e. meniscus "64".

With reference to Tsuboi, the same arguments set forth above are likewise applicable. Additionally, applicant argues that the entrance surface of Tsuboi (figure 10A) is on the left side i.e. the surface in contact with air. However, applicant is broadly claiming "a first lens having a chamber having an entrance surface". Nowhere is it claimed that the entrance surface need be in contact with air. As per the examiner's rejection in the prior office action, the examiner is considering the chamber to be the inner portion of lens 10A that contains fluids "8" and "9". Therefore, the entrance surface i.e. the entrance surface "of the chamber" is the inner surface of container 7 that is in contact with fluid "8". As disclosed in figure 10A, this surface has a curvature and is of the same sign as that of the meniscus between fluids "8" and "9".